

Cook Family Foods, Ltd. and International Brotherhood of Firemen and Oilers, AFL-CIO.
Cases 9-CA-28666, 9-CA-29116, 9-CA-29192,
and 9-RC-15900

July 14, 1995

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND
TRUESDALE

On August 20, 1993, the National Labor Relations Board issued a Decision and Order finding that the Respondent had committed certain violations of Section 8(a)(3) and (1) of the National Labor Relations Act.¹ On February 21, 1995, the United States Court of Appeals for the Sixth Circuit issued a decision enforcing the Board's Order in part and denying enforcement in part.² On May 4, 1995, the Board advised the parties that it had accepted the remand and invited statements of position. The Respondent and the Union subsequently filed statements of position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered its original decision and the record in light of the court's remand, which it accepts as the law of the case. Remaining for the Board's disposition is the status of the certification of representative issued by the Regional Director in Case 9-RC-15900. The Board has decided to revoke the certification and to order a second election in this case.

In its Decision and Order, the Board overruled challenges to the ballots cast by three employees who had been terminated by the Respondent, based on the Board's finding that the terminations violated Section 8(a)(3) and (1). Pursuant to the Board's Order, the Regional Director opened and counted the challenged ballots and thereafter issued a certification of representative. However, the court of appeals has denied enforcement to the Board's finding that the terminations were unlawful. Accepting the court's opinion as the law of the case, we find that the three employees whose ballots were challenged were not eligible to vote in the election. Without counting the ballots cast by these individuals, the tally of ballots is 175 for the Union, 2 votes cast for Intervenor United Food and Commercial Workers, and 174 against representation by either union. Accordingly, we shall revoke the certification of representative.

However, we find that the unchallenged and substantial violations of Section 8(a)(1) enforced by the court of appeals reasonably tended to interfere with employee free choice in the election. In this regard, we note that these violations include surveillance of union

activities, physically accosting prounion employees, coercive interrogations, implied threats of retaliation for engaging in union activities, requiring employees to wear antiunion insignia, confiscation of union literature, and threats of plant relocation, all committed during the critical period between the date the petition was filed and the date of the election. We further note that the threats of plant relocation in particular were widely disseminated throughout the plant. Accordingly, we shall set aside the results of the first election and direct that a second election be held. See, e.g., *Dal-Tex Optical Co.*, 137 NLRB 1782 (1962).³

ORDER

It is ordered that Case 9-RC-15900 is reopened and the previously issued certification of representative is revoked.

IT IS FURTHER ORDERED that a second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their employee status during the eligibility period and their replacements. Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligi-

³ In light of the unfair labor practices set forth above and enforced by the court of appeals, which the Board has previously found constituted objectionable conduct, we find no merit to the contention that a runoff election should be held based on the revised tally of ballots of the first election, which indicate that the results of the first election were inconclusive. To the contrary, the Board's prior findings establish that the first election did not fairly indicate the desires of employees concerning representation. Accordingly, we shall direct a rerun election.

We further note that the Respondent urges that the Board direct an immediate election, while the Union contends that a fair election cannot be held at this time in light of the unfair labor practice charges filed against the Respondent subsequent to the issuance of the Board's prior Decision and Order in this case. According to the Union, the Regional Director has issued a complaint with respect to certain of these charges. We find that these contentions may best be resolved by the Regional Director in the first instance, consistent with our direction of a second election "whenever the Regional Director deems appropriate."

¹ 311 NLRB 1299.

² *NLRB v. Cook Family Foods*, 47 F.3d 809 (6th Cir. 1995).

ble shall vote whether they desire to be represented for
collective bargaining by International Brotherhood of Firemen and Oilers, AFL-CIO, by United Food and Commercial Workers Local 227, or by neither.